

Senate Bill 631

By: Senator Wiles of the 37th

A BILL TO BE ENTITLED
AN ACT

To amend Part 1 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to obscenity and related offenses, so as to repeal certain provisions regarding distributing obscene material, definition of obscene material, and penalty; to provide for the offense of distribution of obscene material; to provide for affirmative defenses; to provide for a criminal penalty; to provide for applicability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to obscenity and related offenses, is amended by repealing in its entirety Code Section 16-12-80, relating to the offense of distributing obscene material, definition of obscene material, and penalty.

SECTION 2.

Said part is further amended by adding a new Code Section 16-12-80 to read as follows:

"16-12-80.

(a) A person commits the offense of distributing obscene material when he or she sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word 'knowing,' as used in this Code section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter; and a person has constructive knowledge of the obscene contents if he or she has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material; provided, however, that the character and reputation of the individual charged with an

1 offense under this law, and, if a commercial dissemination of obscene material is
2 involved, the character and reputation of the business establishment involved may be
3 placed in evidence by the defendant on the question of intent to violate this law.
4 Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene
5 notwithstanding that processing or other acts may be required to make the obscenity
6 patent or to disseminate it.

7 (b) Material is obscene if:

8 (1) To the average person, applying contemporary community standards, taken as a
9 whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid
10 interest in nudity, sex, or excretion;

11 (2) The material taken as a whole lacks serious literary, artistic, political, or scientific
12 value; and

13 (3) The material depicts or describes, in a patently offensive way, sexual conduct
14 specifically defined in subparagraphs (A) through (E) of this paragraph:

15 (A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted,
16 actual or simulated;

17 (B) Acts of masturbation;

18 (C) Acts involving excretory functions or lewd exhibition of the genitals;

19 (D) Acts of bestiality or the fondling of sex organs of animals; or

20 (E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic
21 sexual relationship.

22 (c) Any device designed or marketed as useful primarily for the stimulation of human
23 genital organs is obscene material under this Code section.

24 (d) Material not otherwise obscene may be obscene under this Code section if the
25 distribution thereof, the offer to do so, or the possession with the intent to do so is a
26 commercial exploitation of erotica solely for the sake of their prurient appeal.

27 (e) It is an affirmative defense under this Code section that selling, lending, renting,
28 leasing, giving, advertising, publishing, exhibiting, or otherwise disseminating the material
29 was restricted to:

30 (1) A person associated with an institution of higher learning, either as a member of the
31 faculty or a matriculated student, teaching or pursuing a course of study related to such
32 material; or

33 (2) A person whose receipt of such material was authorized in writing by a licensed
34 medical practitioner or psychiatrist.

35 (f) A person who commits the offense of distributing obscene material shall be guilty of
36 a misdemeanor of a high and aggravated nature."

1 **SECTION 3.**

2 This Act shall not apply to any offense committed before July 1, 2006.

3 **SECTION 4.**

4 This Act shall become effective on July 1, 2006.

5 **SECTION 5.**

6 All laws and parts of laws in conflict with this Act are repealed.